

Message Text

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ACTION NEA-10

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LIMITED OFFICIAL USE SECTION 1 OF 2 BAGHDAD 0630

E.O. 11652: N/A
TAGS: BEXP, BGEN, ETRD, IZ
SUBJECT: IRAQI AGENTS LAW AND IMPLEMENTING REGULATIONS

REF: (A) USDOC 1956, (B) BAGHDAD 068, (C) BAGHDAD 323,
(D) BAGHDAD 286, (E) BAGHDAD 581

1. SUMMARY. AFTER ONE YEAR MOST FOREIGN FIRMS STILL ARE UNSURE AS TO HOW TO COME TO GRIPS WITH THE IMPLICATIONS OF THE AGENTS LAW. ONLY FIFTEEN HUNDRED FIRMS, AN ESTIMATED TEN-TO-FIFTEEN PERCENT OF THE NUMBER WHICH HAD SOME SORT OF AN AGENCY ARRANGEMENT PRIOR TO THE LAW, HAVE HAD AGENCY AGREEMENTS FORMALLY REGISTERED UNDER THE NEW LAW. OF THIS TOTAL, ONLY FOUR OR FIVE ARE AMERICAN FIRMS. U.S. FIRMS HAVE GENERALLY SOUGHT TO SKIRT PROBLEM BY COVERING IRAQI MARKET THROUGH PERSONAL VISITS OF COMPANY REPRESENTATIVES, SOMETIMES ASSISTED BY PRIVATE IRAQI CONTACTS. TIGHTENING OF IRAQI VISA REQUIREMENTS FOR U.S. BUSINESSMEN, HOWEVER, CALLS THIS APPROACH INTO QUESTION. END SUMMARY.

2. USINT OFFICER TALKED TO LOCAL LAWYERS AND CALLED ON MINISTRY OF TRADE OFFICIALS RESPONSIBLE FOR REGISTRATION OF BRANCHES OF FOREIGN COMPANIES OPERATING IN IRAQ AND FOR REGISTRATION OF AGENTS OF FOREIGN FIRMS TO DISCUSS
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QUESTIONS IN REF. A. FOLLOWING PARAGRAPHS ARE KEYED TO QUESTIONS IN THAT REFTEL.
A. NUMBER OF AGENCY AGREEMENTS. MINISTRY OF TRADE OFFICIALS SAID THAT 1500 AGENCY AGREEMENTS WITH FOREIGN FIRMS HAVE BEEN REGISTERED AND APPROVED. ONLY "FOUR OR FIVE" OF THESE ARE U.S. FIRMS, AND OFFICIAL COULD ONLY CITE BY NAME STARCO, U.S. CONTRACTOR FOR THE BASRAH SEWERAGE PROJECT.

COMMENT: ONE LOCAL AGENT ESTIMATES ONLY TEN TO FIFTEEN PERCENT OF FOREIGN FIRMS WHICH HAD SOME SORT OF AGENCY PRIOR TO LAW NUMBER EIGHT HAVE FORMALLY REGISTERED NEW AGENCY AGREEMENTS. END COMMENT.

B. MODIFICATIONS. OFFICIALS INSISTED THERE IS NO FLEXIBILITY IN PRESCRIBED TEXT OF AGENCY AGREEMENTS. HOWEVER, WE KNOW OF ONE CASE IN WHICH A NON-U.S. FIRM CHANGED POINT SEVEN OF "BOYCOTT OATH" TO READ "WE HAVE NO RELATIONS WITH ISRAEL WHICH CONTRAVENES ARAB LEAGUE BOTCOTT RELATIONS" VICE "WE ARE NEITHER BOYCOTTED BY ARAB COUNTRIES NOR HAVE ANY RELATIONS WITH ISRAEL."

C. DEFINITION OF AN AGENT. IRAQI LAW DOES NOT CLEARLY DEFINE AN AGENT, BUT MINISTRY OF TRADE OFFICIALS SAID THAT TAKING OF A COMMISSION SALES OR A SET RETAINER FOR PROMOTING SALES IS THE PRIMARY CRITERION. FULL-TIME EMPLOYEES OF FOREIGN FIRMS, WHO DRAW FIXED SALARIES, ARE NOT CONSIDERED AGENTS BUT THEIR OFFICES MUST ALSO BE REGISTERED UNDER THE COMMERCIAL LAW AS BRANCHES OF FOREIGN FIRMS. THE SAME BOYCOTT OATH IS REQUIRED. MANY GOI AGENCIES, ESPECIALLY STATE IMPORTING COMPANIES, ARE RELUCTANT TO DEAL WITH DISTRIBUTORS/EXPORT MANAGEMENT COMPANIES AND PREFER TO DEAL DIRECTLY WITH FOREIGN SUPPLIERS AND MANUFACTURERS. MANY GOI AGENCIES MAKE EXCEPTIONS FOR DISTRIBUTORS/EXPORT MANAGMENT FIRMS THAT HAVE EXCLUSIVE FRANCHISES FOR IRAQ. IN ADDITION, JAPANESE COMMERCIAL ATTACHE INFORMS US THAT THE GOI HAS MADE A GENERAL EXCEPTION FOR JAPANESE TRADING COMPANIES, WHOSE PERMANENT REPRESENTATIVES IN IRAQ ARE REQUIRED TO REGISTER AS REPRESENTATIVES OF FOREIGN LIMITED OFFICIAL USE

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COMPANIES. SOME FOREIGN FIRMS, INCLUDING U.S. BASED MULTINATIONALS, HAVE ENGAGED IRAQI LAWYERS TO FOLLOW TENDERS AND DO SOME OTHER FUNCTIONS FREQUENTLY PERFORMED BY AGENTS. HOWEVER, EACH IRAQI LAWYER IS ALLOWED TO REPRESENT ONLY THREE FOREIGN FIRMS. IN ADDITION, A USUALLY RELIABLE SOURCE HAS TOLD US THAT AT LEAST ONE PROMINENT IRAQI ATTORNEY HAS BEEN CALLED IN FOR QUESTIONING REGARDING ACTIVITIES WHICH APPEARED TO BE MORE IN THE ROLE OF AN AGENT THAN A LEGAL ADVISOR. D. BOYCOTT. AS REPORTED IN REF. D, THE MINISTRY OF FOREIGN AFFAIRS DIRECTOR FOR BOYCOTT AFFAIRS HAS TOLD US THAT SEVEN POINT OATH WOULD BE REPLACED BY EIGHT POINT QUESTIONNAIRE IN FOREIGN TRADE DOCUMENTS, E.G., GENERAL CONDITIONS FOR MINISTRY OF DEFENSE TENDER CALLS. HOWEVER, NEITHER HE NOR MINISTRY OF FOREIGN TRADE OFFICIALS COULD CONFIRM THAT CHANGE WOULD ALSO BE MADE IN AGENCY REGISTRATION DOCUMENTS.

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E. WHICH GOI AGENCIES DEAL WITH AGENTS? ONLY THE
PROCUREMENT OFFICE OF THE MINISTRY OF DEFENSE DEALS WITH
AGENTS ON A REGULAR BASIS. SOME SUBSIDIEARY AGENCIES
OF THE MINISTRY OF INDUSTRY, MINISTRY OF AGRICULTURE AND
AGRARIAN REFORM AND THE MINISTRY OF IRRIGATION DEAL WITH
AGENTS BUY MANY WITH WHHICH U.S. FIRMS HAVE FREQUENT
CONTACT DO NOT. FOR EXAMPLE, THE STATE ORGANIZATION FOR
ELECTRICITY UNDER THE MINISTRY OF INDUSTRY DOES NOT.
AS A MATTER OF POLICY, ALL STATE IMPORITNG ORGAIZATIONS
OPERATING UNDER THE MINISTRY OF TRADE, WHICH NOW COMBINES
THE FORMER MINSTRIES OF FOREIGN AND DOMESTIC TRADE, DO
NOT DEAL WITH AGENTS AND GENERALLY DO NOT DEAL WITH
DISTRIBUTORS/EXPORT MANAGEMENT ORGANIZATIONS WITH THE
EXCEPTION OF JAPANESE FIRMS. TENDER CALLS FROM THESE
ORGANIZATIONS ARE RARELY PUBLIC; THUS FOREIGN FIRMS MUST
MAKE THEIR INTEREST KNOWN BY WRITING TO THESE ORGANIZATIONS
AND FORWARDING BROCHURES AND PRICE LISTS.

F. VIOLATIONS AND INDEMNITY GUARANTY. ACCORDING TO THE
MINISTRY OF TRADE OFFICIALS, THERE HAVE BEEN NO CASES
OF VIOLATION LEADING TO CONVICTION. GOI OFFICIALS STRESS
THAT THE INDEMNITY GUARYANTY APPLIES ONLY WITHIN THE
SCOPE OF THE CONTRACT BETWEEN THE PRINCIPAL AND HIS
AGENT AND CLAIM THAT THE GUARANTY PROVISIONS ARE NOT A
SERIOUS PROBLEM PROVIDED THE PRINCIPAL HAS TAKEN DUE CARE
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IN CONCLUDING THE AGENCY AGREEMENT. COMMENT. MOST

FOREIGN COMPANY REPRESENTATIVES WITH WHOM WE HAVE TALKED DO NOT SHARE THIS VIEW. NONETHELESS, SEVERAL FOREIGN FIRMS HAVE SIGNED AGREEMENTS WHICH LIMIT THE SCOPE OF THE AGENT'S ACTIVITIES AND THEREBY THE PRINCIPAL'S LIABILITY. FOR EXAMPLE, A COMPANY MAY NOT AUTHORIZED ITS AGENT TO GIVE FINAL PRICES OR TO INITIAL CONTRACTS, OR IT MAY LIMIT THE AGENCY TO DEALING WITH A SPECIFIC CLIENT OR FOR A SPECIFIC TENDER.

G. DEADLINE. OFFICIALS SAID REQUIREMENTS OF AGENTS LAW ARE NOW FULLY IN EFFECT. THE LAW REQUIRES THAT AGENTS SUBMIT THEIR APPLICATIONS FOR REGISTRATION WITHIN SEVEN DAYS OF COMPLETION OF AUTHENTICATION OF THE DOCUMENTS AND FORBIDS AGENT ACTIVITY PRIOR TO SUCH REGISTRATION. SOME GOVERNMENT TENDER NOTICES IN THE PUBLIC PRESS CARRY THE NOTICE THAT "LOCAL TENDERERS OR REPRESENTATIVES WILL NOT BE PERMITTED TO PARTICIPATE UNLESS THEY ARE AUTHORIZED BY THE AGENCIES AND TRADING REGISTRATION OFFICE AT THE DIRECTORAT GENERAL OF REGISTRATION AND CONTROL OF COMPANIES..."

H. REVIEW COMMITTEE. OFFICIALS SAID AGENCY LAW IS NO LONGER UNDER REVIEW AND NO CHANGES ARE ANTICIPATED.

3. GENERAL COMMENT. AFTER ONE YEAR, LAW NUMBER EIGHT HAS ELIMINATED MOST SMALL IRAQI AGENTS. THE 1500 REGISTERED AGENCY AGREEMENTS PROBABLY FOR THE MOST PART ARE BETWEEN FOREIGN FIRMS AND IRAQI AGENTS WITH WHOM THEY HAVE HAD PREVIOUS EXPERIENCE. NEW-TO-THE-MARKET FIRMS OF ALL NATIONALITIES HAVE BEEN RELUCTANT TO SIGN AGENCY AGREEMENTS BECAUSE OF THE GUARANTY PROVISIONS.

4. SMALL NUMBER OF U.S. FIRMS REGISTERED REFLECTS NOT ONLY CONCERN ABOUT THE GUARANTY BUT ALSO THE UNWILLINGNESS OF U.S. COMPANIES TO SIGN BOYCOTT OATH. THUS, PRINCIPAL REACTION OF U.S. FIRMS HAS BEEN TO COVER IRAQI MARKET THROUGH CORRESPONDENCE AND THROUGH PERSONAL VISITS BY COMPANY REPRESENTATIVES. SOME ALSO RELY ON LIMITED OFFICIAL USE

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IRAQI PRIVATE SECTOR CONTACTS FOR LOGISTICAL ASSISTANCE MAND ADVISE BUT PROHIBIT THEIR LOCAL IRAQI PRIVATE SECTION CONNECTIONS FROM HAVING CONTACTS WITH GOI OFFICIALS IN THE NAME OF THE PARENT FIRM. THIS PRACTICE MAY RISK BLACK LISTING OF PARENT FIRM AND PUNISHMENT OF IRAQI PRIVATE AGENCY CONCERNED IF THE GOI WERE TO DECIDE ON STRINGENT ENFORCEMENT OF LAW NUMBER EIGHT. MOREOVER, THE GENERAL TIGHTENING OF IRAQI VISA REQUIREMENTS FOR U.S. BUSINESSMEN (AS WELL AS THOSE OF SEVERAL OTHER NATIONALITIES INCLUDING BRITISH, GREEK, DUTCH AND SPANISH) ALSO CALLS INTO QUESTION THE FREQUENCY WITH WHICH U.S. FIRMS WILL BE ABLE TO CONTINUE TO COVER THE IRAQI MARKET THROUGH PERSONAL VISITS.

5. DECONTROL UPON RECEIPT.

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